

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Amendment of Part 90
of the Commission's Rules
to Adopt Regulations for Automatic
Vehicle Monitoring Systems

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PR Docket No. 93-61

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**COMMENTS OF THE CONSUMER ELECTRONICS GROUP
OF THE ELECTRONIC INDUSTRIES ASSOCIATION**

The Consumer Electronics Group of the Electronic Industries Association ("EIA/CEG") hereby opposes in part and supports in part the petitions for reconsideration that were filed on April 24, 1995, in response to the Commission's *Report and Order* in the above-captioned proceeding.¹ In the *Report and Order*, the Commission established rules which, among other things, govern the shared use of the 902-928 MHz band by Part 15 devices and systems in the Location and Monitoring Service ("LMS").

EIA/CEG opposes the petitions filed by LMS interests that would undo the positive steps the Commission has taken to preserve for Part 15 devices access to the 902-928 MHz band. In particular, EIA/CEG opposes the requests that the Commission eliminate the conclusive presumption that certain Part 15 operations do not cause harmful interference to LMS systems. EIA/CEG also opposes the proposals to eliminate the requirement that multilateration LMS licensees demonstrate in field tests that their systems do not cause unacceptable levels of

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¹ See *Regulations for Automatic Vehicle Monitoring Systems*, Report and Order, PR Docket No. 93-61, FCC 95-41 (released Feb. 6, 1995) [hereinafter "*Report and Order*"].

interference to Part 15 devices. Each of these proposals would undermine the salutary regulatory certainty which the *Report and Order* seeks to create.

EIA/CEG supports those petitions that have asked the Commission to clarify the procedures for determining whether multilateration LMS operations cause unacceptable interference to Part 15 devices. In this regard, EIA/CEG stands ready to assist the Commission in developing field test procedures and criteria for ascertaining what constitutes unacceptable interference to such devices. EIA/CEG also supports the proposal by CellNet Data Systems, Inc. to make Part 15 devices co-primary with LMS operations in some portions of the band.² Both of these actions are essential to promoting the continued development of Part 15 devices.

I. THE COMMISSION SHOULD REJECT REQUESTS TO WEAKEN THE EQUITABLE COMPROMISE THAT HAS BEEN ACHIEVED.

Notwithstanding the many petitions for reconsideration which have been filed, the Commission's *Report and Order* is fundamentally sound. Indeed, the Commission is to be commended for bringing this extremely contentious and complicated proceeding to such a successful conclusion. In particular, the *Report and Order* properly recognized the "important contribution" which Part 15 technologies have made in promoting the efficiency of business and the public welfare.³ As the Commission has recognized elsewhere, many businesses and other

² See Petition for Reconsideration of CellNet Data Systems, Inc., PR Docket No. 93-61, at 3 (filed Apr. 24, 1995) [hereinafter "CellNet Petition"].

³ *Report and Order*, ¶ 34.

institutions literally could not function without the information and support provided by Part 15 equipment.⁴

One of the principal benefits of the Commission's new rules governing use of the 902-928 MHz band is that they promote certainty. Certainty is essential if Part 15 manufacturers are to be in a position to continue to provide consumers with the benefits of Part 15 technology. To ensure that Part 15 devices continue to prosper in the 902-928 MHz band, the Commission's newly revised rules specify that Part 15 devices presumptively do not interfere with multilateration LMS systems if the Part 15 devices operate within certain parameters.⁵ New Section 90.361 of the Commission's rules thus creates a "safe harbor" for Part 15 manufacturers, within which they can develop products for broad distribution without fear of those products being rendered useless by interference complaints from co-channel multilateration LMS systems.

Several LMS petitioners, however, have asked the Commission to upset the certainty created by the *Report and Order*. Specifically, these parties have asked the Commission to eliminate the safe harbor which the presumption of non-interference creates for

⁴ In a related proceeding, the Commission recently enumerated many of the socially valuable uses of Part 15 devices. Among others, the Commission identified low-cost access for schools and libraries to broadband networks, wireless offices, health care monitoring, cordless telephones, and baby monitors. In that proceeding, the Commission decided to retain the 2402-2417 MHz band for Part 15 use. As to Part 15 devices in general, the Commission noted: "technologies implemented through Part 15 devices have the potential to benefit virtually every person and business in the nation, as well as to promote American competitiveness abroad." *Allocation of Spectrum Below 5 GHz Transferred From Federal Government Use*, First Report and Order and Second Notice of Proposed Rule Making, ET Docket No. 94-32, FCC 95-47, ¶ 32 (released Feb. 17, 1995).

⁵ See *Report and Order*, Appendix A at § 90.361.

certain Part 15 devices, and to replace it with a rebuttable presumption that Part 15 devices do not cause harmful interference.⁶ EIA/CEG could not disagree more with this position.

The conclusive presumption of non-interference by Part 15 devices is the core of the Commission's band sharing compromise. This presumption defines for both the LMS and Part 15 industries the types of Part 15 devices which can be designed and operated in the 902-928 MHz band on a broad scale basis without fear of removal. The presumption also leaves room within the band for the development of future Part 15 devices without noticeably impairing LMS development.

A rebuttable presumption would upset this carefully crafted balance. Part 15 device manufacturers would be deprived of the regulatory certainty they require to promote the ubiquity of their products. Moreover, a rebuttable presumption would give LMS operators less of an incentive to engineer systems which respect the needs of Part 15 users. Rather than clarifying and refining the governing principles in this band, a rebuttable presumption would perpetuate the controversy over the use of these frequencies.

Similarly, EIA/CEG urges the Commission to reject those petitions which seek to eliminate the provision in new Section 90.353(a)(4) of the Commission's rules which requires licensees of new multilateration LMS systems to demonstrate through actual field tests -- as a precondition to permanent operations -- that they do not cause unacceptable interference to Part 15 devices.⁷ In support of their request for relief, these petitioners argue that the Commission's

⁶ See Petition for Reconsideration of Mobilevision, L.P., PR Docket No. 93-61, at 13 (filed Apr. 24, 1995); Petition for Reconsideration of Southwestern Bell Mobile Systems, Inc., PR Docket No. 93-61, at 9 (filed Apr. 24, 1995) [hereinafter "Southwestern Bell Petition"].

⁷ See *Report and Order*, Appendix A at § 90.353(a)(4).

testing requirement elevates the status of Part 15 devices without prior notice or an opportunity to comment.⁸ As a legal matter, their arguments are baseless. As a policy matter, removal of the testing requirement also would undo the careful balance established by this proceeding and foment needless regulatory uncertainty.

Petitioners' "prior notice" argument ignores the breadth of the Commission's discretion, once the Commission fairly apprises interested parties of the issues to be addressed in a rulemaking proceeding. The Commission's ultimate decisions are deemed reasonable by the courts, so long as they are of the general type described by a notice of proposed rulemaking or are a logical outgrowth of the notice.⁹ Here, no party can reasonably claim that the Commission did not give adequate notice of its intentions.

As originally released, the *Notice of Proposed Rule Making* in this proceeding asked whether Part 15 operations should be removed from the 902-928 MHz band. In a duly noticed and much anticipated erratum, the Commission rephrased the question and asked instead for suggestions on limiting interference between LMS and Part 15 devices "short of" removing Part 15 operations from the band.¹⁰ Thus, from the very outset, the Commission made it unmistakably clear that it had no intention of eliminating Part 15 operations from the band and

⁸ See *Petition for Reconsideration of Pinpoint Communications, Inc.*, PR Docket No. 93-61, at 21 (filed Apr. 24, 1995); *Southwestern Bell* Petition at 7-9.

⁹ See *Logansport Broadcasting Corp. v. United States*, 210 F.2d 24, 28 (D.C. Cir. 1954) (the Administrative Procedures Act "requires only that the prior notice include 'a general description of the subjects and issues involved'"); *Natural Resources Defense Council v. Thomas*, 838 F.2d 1224, 1242 (D.C. Cir.) cert. denied sub nom. *Alabama Power Co. v. Thomas*, 109 S.Ct. 219 (1988) (the "germ" of the outcome was in the original proposal).

¹⁰ *Regulations for Automatic Vehicle Monitoring Systems*, PR Docket No. 93-61, DA 93-516 (released May 5, 1993).

that it was looking for alternatives to prevent interference between LMS and Part 15 devices. Once initiated, the focus of this proceeding has been on how to achieve this end. The Commission's decision to require prior testing of multilateration LMS systems was clearly presaged by the Commission's notice and is plainly a logical outgrowth of this inquiry.

Indeed, the testing requirement is an essential element in preserving the use of the 902-928 MHz band by Part 15 devices. Such testing recognizes the significant RF profile which multilateration LMS operations do and will create. Absent such testing, there would be no practical way of knowing before permanent operations are authorized whether a proposed multilateration system would defeat the Commission's goals by, in effect, forcibly removing Part 15 devices from the band. After-the-fact interference analyses are not a reasonable alternative. Indeed, an after-the-fact test could force Part 15 operations out of the band and/or force LMS operations off the air after formal operations have begun. The prospect of such operational disruptions (even if temporary) undermines the regulatory certainty which is one of the principal benefits of the Commission's compromise plan.

II. THE COMMISSION SHOULD CLARIFY THE TEST FOR "UNACCEPTABLE INTERFERENCE" TO PART 15 DEVICES.

Several parties have asked the Commission to clarify the field test requirement contained in new Section 90.353 of the Commission's rules. Specifically, they have asked for clarification of what constitutes "unacceptable interference" to Part 15 devices, and that the Commission develop procedures for ascertaining when such interference exists.¹¹ EIA/CEG

¹¹ See Petition for Reconsideration of Metricom, Inc. and Southern California Edison Company, PR Docket No. 93-61, at 8-10 (filed Apr. 24, 1995); Petition for Reconsideration of Alarm Industry Communications Committee, PR Docket No. 93-61,

agrees with these parties that a clearly articulated field test requirement is critical to the Commission's sharing scheme.

In its *Report and Order*, the Commission has implicitly recognized that uncontrolled development of multilateration LMS systems would effectively eliminate the viability of Part 15 operations in this band -- a result which would be inconsistent with one of the principal goals of the proceeding. To avoid this possibility, the Part 15 and LMS interests have endeavored (albeit contentiously) to establish parameters pursuant to which the parties can continue to operate successfully in the 902-928 MHz band. Multilateration LMS technology, however, has yet to be deployed or used on a wide-scale basis. The field test requirement is aimed at addressing this uncertainty.

The field test requirement, however, should be clarified so that the Commission's sharing plan works in practice, as well as in theory. Specifically, EIA/CEG urges the Commission to define, and to specify testing procedures for, unacceptable interference. EIA/CEG offers to assist the Commission in this regard. EIA/CEG has a longstanding record of helping the Commission in developing standards; *e.g.*, in the closed captioning area and now in the development of standards for cable compatibility. EIA/CEG looks forward to the prospect of assisting the Commission with this latest challenge.

at 5 (filed Apr. 24, 1995); Petition for Reconsideration of Part 15 Coalition, PR Docket No. 93-61, at 15 (filed Apr. 24, 1995); Petition for Reconsideration of UTC, PR Docket No. 93-61, at 11-12 (filed Apr. 24, 1994); CellNet Petition at 6.

III. THE CONTINUING CONTROVERSY SURROUNDING THE OPERATION OF PART 15 DEVICES MILITATES IN FAVOR OF AN EXCLUSIVE ALLOCATION OF SPECTRUM TO SUCH OPERATIONS.

In its petition for reconsideration, CellNet has renewed its request that the Commission make a portion of the 902-928 MHz band available exclusively for Part 15 operations.¹² The contentiousness of this proceeding has led EIA/CEG to a similar conclusion.

In ET Docket No. 94-32, EIA/CEG noted:

This spectral "to and fro" is an inherent and inevitable consequence of the current regulatory framework. As Part 15 devices become ever more sophisticated and more prevalent, their vulnerability to the kinds of operating restraints proposed in this proceeding and elsewhere will become an increasingly significant liability. If the public is to continue to benefit from the widespread availability and use of Part 15 devices, the Commission must start addressing this problem. The Commission's management of the radio spectrum is one of its most fundamental responsibilities. The Commission has correctly exercised that responsibility by promoting the development of Part 15 devices. In view of the important role those devices now play in today's society, the Commission should reinforce its commitment to Part 15 manufacturers and users by eliminating wherever possible the lingering uncertainty which its regulatory framework creates.¹³

Now that the Commission has encouraged the development of Part 15 technologies, it should take all reasonable steps to promote the public's confidence in their regulatory stability. The Commission should therefore consider assigning additional spectrum "homes" for them, including as CellNet has suggested a home in the 902-928 MHz band. If necessary, the Commission should issue a further notice of proposed rulemaking to this end.

¹² CellNet Petition at 3.

¹³ Reply Comments of EIA/CEG, ET Docket No. 94-32, at 3 (filed Apr. 4, 1995).

IV. CONCLUSION.

For all of the reasons set forth above, EIA/CEG urges the Commission: to reject requests to weaken the rules which preserve Part 15 devices' access to the 902-928 MHz band; to clarify the testing procedures and criteria for measuring the interference which multilateration LMS systems cause Part 15 devices; and to allocate a portion of the 902-928 MHz band exclusively for Part 15 devices.

Respectfully submitted,

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May 24, 1995

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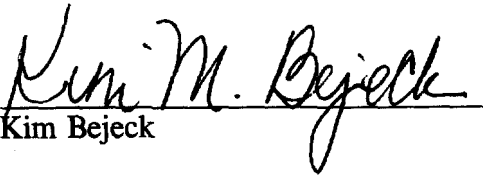
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CERTIFICATE OF SERVICE

I, Kim M. Bejeck, do hereby certify that on this 24th day of May, 1995, I have caused a copy of the foregoing to be served via first class United States Mail, postage pre-paid, upon the persons listed on the attached service list.


Kim Bejeck